

60,130-1197; OIMRA0362

REMARKS

Claims 1-8, 10-11 and 14 are presently pending in the application. Claims 1 and 11 are in independent form.

The Examiner rejected claims 1-6 and 9-11 under §102(b) over Butkovich. Claim 9 is also allowable because element 116 in Butkovich is not a differential. Element 116 is two constantly meshing bevel gears that are not capable of permitting relative movement between the shafts, which is required of all differentials. The Examiner has not responded to this argument, which was presented in the last office action. Applicant has amended claim 1 to include the limitations of claim 9, which is believed to be allowable. At a minimum, the amendment narrows the issues on appeal.

Claims 3-5 are also allowable because the bearing cage in Figure 3 cannot be the three different types of bearing cages claimed. How can one bearing cage in a single Figure be three different things? "Input," "pinion," and "through" shafts are all particular types of arrangement found in axles that may have different bearing arrangements based upon the very different loading they experience. This is explained in paragraph 11 of the specification and shown in Figure 1. While the Examiner is permitted to read the claim language broadly, clearly the Examiner cannot read all the terms to mean the same. Accordingly, the Examiner cannot use a single figure to anticipate what three different configurations, which are well recognized by one of ordinary skill in the art. With regard to the Examiner's observation that the Applicant shows one bearing cage for all three embodiments: 1) the Applicant's application is irrelevant regarding the Examiner's burden in demonstrating what the prior art teaches; 2) the ends of shaft 28 in Figure 3 are not illustrated because they vary depending upon the application (13, 14, or 17 in Figure 1); if claims 3-5 are all the same then the Examiner should have given a §112 rejection, and if the Examiner does so now she must withdraw the finality of the rejection. In any event, the Examiner has not met the burden of proof regarding anticipation, and the rejection must be withdrawn.

Regarding claim 11, the Applicant meant to refer to claim 13 in its argument. Claim 11 has been amended to include the limitations of claim 13. The amendment to claim 11 would simplify

60,130-1197; 01MRA0362

the issues on appeal. Claim 13 is allowable because Butkovich does not disclose a bearing cage supporting two seals. Furthermore, Butkovich does not disclose one seal that is adjacent to a yoke and one seal that is adjacent to a pinion. Specifically, there is no yoke in Butkovich.

Claims 7, 13, and 14 were rejected under §103 over Butkovich in view of Fox. The combination is improper because the Examiner motivation is flawed. The Examiner argues that one of ordinary skill in the art would modify Butkovich with the seal of Fox to provide "more effective sealing" or "more protection from moisture." Fox is for tire inflation system seal, and Butkovich is directed to a particular drive configuration for a harvester. The two disclosures have entirely unrelated problems. Furthermore, Fox does not teach that its seal is more effective or that it protects from moisture. There is nothing that indicates the Fox seal is better or worse than that of Butkovich—it is merely different. Without such a teaching one of ordinary skill in the art would not be motivated to modify Butkovich. Moreover, the seal would not even be exposed to moisture, but instead separates two different lubricants. The Applicant is not arguing that Fox is nonanalogous art, but rather, given the teachings of the references and there different problems, the Examiner cannot establish a prima facie case of obviousness. Specifically, the Examiner has not provided any support for the stated motivation in the references. Accordingly, the rejection is improper.

The Examiner now adds to her argument that the claimed sealing arrangement is "old and well known." This is not sufficient to meet the burden of proof for a prima facie case of obviousness (see MPPFP 2143.01). There must be a motivation for one of ordinary skill to modify the basic reference. Merely stating that something is known is not sufficient and will not withstand appeal. Clearly the Examiner is using hindsight by picking and choosing elements from the references.

60,130-1197; 01MRA0362

For the reasons set forth above, Applicant submits that the pending claims in the application are allowable. Applicant respectfully solicits allowance of these claims. If any fees or extensions of time are required, please charge to Deposit Account No. 50-1482.

Respectfully submitted,
CARLSON, GASKEY & OLDS



William S. Gottschalk
Registration No. 44,130
400 W. Maple, Suite 350
Birmingham, MI 48009
(248) 988-8360

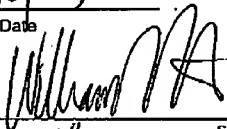
Dated: 11/30/03

PTO/SB/97 (08-00)
Approved for use through 10/31/2002, OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the
United States Patent and Trademark Office

on 11/30/03 To: 703 872-9327
Date



Signature

William S. Gottschalk

Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of transmission, or this certificate must identify
each submitted paper.

09/981,238
Amendment AF

Burden Hour Statement: This form is estimated to take 0.03 hours to complete. Time will vary depending upon the needs of the individual case.
Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark
Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents,
Washington, DC 20231.